

Remarks

1. Summary of the Office Action

In the office action mailed May 11, 2009, the Examiner rejected claims 1-4, 6-10, 12-15, 17, 19-20, 22, and 24-26 under 35 U.S.C. § 103(a) as being allegedly obvious over U.S. Patent No. 6,078,957 (Adelman) in view of U.S. Patent Application Pub. No. 2002/0152446 (Fleming) in view of U.S. Patent No. 7,193,985 (Lewis). In stating this rejection generally on page 3 of the office action, the Examiner did not mention the Lewis patent. However, in discussing the rejection, the Examiner then sought to apply the Lewis patent. Therefore, Applicant assumes the Examiner mistakenly left out a mention of the Lewis patent from the statement of the rejection on page 3, and Applicant will respond as if the Examiner had not made that mistake. If Applicant's assumption is incorrect, Applicant requests clarification.

In addition, the Examiner rejected claims 5, 11, and 21 under 35 U.S.C. § 103(a) as being allegedly obvious over Adelman in view of Fleming in view of Lewis in view of U.S. Patent Application Pub. No. 2004/0230661 (Rashid), the Examiner rejected claim 16 under 35 U.S.C. § 103(a) as being allegedly obvious over Adelman in view of Fleming in view of Lewis in view of RFC 2543, and the Examiner rejected claim 23 under 35 U.S.C. § 103(a) as being allegedly obvious over Adelman in view of Fleming in view of Lewis in view of U.S. Patent No. 6,014,694 (Aharoni).

2. Status of the Claims

Pending are claims 1-17 and 19-26, of which claims 1, 4, 9, 14, 19, 20, 25, and 26 are independent and the remainder are dependent.

3. Response to the Rejections

In rejecting each independent claim, the Examiner repeated largely verbatim what the Examiner stated in the previous office action, and the Examiner then added:

Although Adelman and Fleming show substantial features of the claimed invention, Adelman and Fleming do not explicitly show where the keepalive period is sent in an acknowledgement of a keepalive message. In an analogous art, Lewis discloses where keepalive period is sent in an acknowledgement of a keepalive message. (col. 11, lines 38 to col. 12, line 10. See fig. 4 and 5). Giving the teaching of Fleming, a person of ordinary skill in the art would have readily recognized the desirability and advantage of modifying Adelman and Fleming by employing the heartbeat acknowledging system of Lewis such that a network device's active state is known and the receipt of previously sent message is recognized.

In fact, however, the portion of Lewis on which the Examiner relied for a supposed teaching of a keepalive period being sent in an acknowledgement of a keepalive message does not teach that feature.

That cited portion of Lewis teaches that a foreign agent sends a Heartbeat Initialization (INIT) message to a foreign agent control node, and the control node sends an INIT Acknowledge message to the foreign agent. The cited portion then teaches that the foreign agent subsequently sends to the control node periodic Heartbeat messages, and that the control node responds to each periodic Heartbeat message with a Heartbeat Acknowledge message. And the cited portion then states:

According to another embodiment, heartbeat messages, such as Heartbeat INIT and periodic Heartbeat messages, may include heartbeat intervals so that the control node expects to receive the next heartbeat message from the foreign agent prior to an end of the heartbeat interval specified by the foreign agent in the previous heartbeat message.

(Column 12, lines 3-10.)

This teaching of Lewis does not involve including a keepalive period in an acknowledgement of a keepalive message. Rather, it involves including a keepalive period in the keepalive message itself. Pursuant to the teaching of Lewis, the client (namely, the foreign agent) includes a keepalive period (namely, a heartbeat interval) in the keepalive message (namely, the heartbeat message) that the client sends to the control node, so that the control node will know that if a next keepalive message does not arrive from the client within that specified keepalive period, the control node may deem the keepalive message to be missing. That arrangement does not amount to the claim feature at issue, as that arrangement does not involve including a keepalive period in an acknowledgement of a keepalive message.

For sake of completeness, Applicant has also reviewed the entire Lewis reference and has not found in Lewis any teaching of the admittedly missing feature of the keepalive period being sent in an acknowledgement of the keepalive message.

Because the Examiner based the obviousness conclusion on a belief that Lewis teaches a feature that Lewis does not actually teach, the factual basis underlying the Examiner's obviousness conclusion was fundamentally flawed.

Given the Examiner's admission that the Adelman/Fleming combination fails to teach the claim feature at issue, and given that Lewis in combination with Adelman/Fleming does not make up for that admitted deficiency, Applicant's invention as a whole does not follow reasonably from the limited teachings of the proposed Adelman/Fleming/Lewis combination. Therefore, Applicant submits that *prima facie* obviousness of the independent claims over Adelman in view of Fleming in view of Lewis does not exist and that the independent claims are allowable. Furthermore, Applicant submits that the dependent claims are allowable for at least the reason that they depend from the allowable independent claims.

4. Conclusion

For the foregoing reasons, and without conceding any additional assertion by the Examiner that is not expressly addressed in these remarks, Applicant respectfully requests reconsideration and allowance of the claims.

Should the Examiner wish to discuss this case with the undersigned, the Examiner is invited to call the undersigned at (312) 913-2141.

Respectfully submitted,

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